

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of:

**INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA,**

An Authorized Insurer.

CONSENT ORDER

No. D 02 - 125

FINDINGS OF FACT:

1. Insurance Company of the State of Pennsylvania ("Pennsylvania") holds a certificate of authority which was duly and properly issued by the Washington State Insurance Commissioner. "Pennsylvania" is therefore governed by the provisions of Title 48 RCW, the Insurance Code. Specifically, it is authorized as a casualty insurer, among other lines of insurance.
2. In 1993, the Washington state legislature enacted chapter 48.87 RCW, "Midwives and Birth Centers - Joint Underwriting Association." RCW 48.87.030 provided that the Insurance Commissioner was required to approve, by December 31, 1993, "a reasonable plan for the establishment of a nonprofit joint underwriting association (JUA)...for midwifery and birth center insurance subject to the conditions and limitations contained in this chapter." RCW 48.87.040 provided that "The (JUA) association shall be comprised of all insurers possessing a certificate of authority to write and engaged in the writing of medical malpractice insurance within this state, and general casualty companies. Every insurer shall be a member of the (JUA) association and shall remain a member as a condition of its authority to continue to transact business in this state." RCW 48.87.100 authorized the Insurance Commissioner to adopt "all rules necessary to ensure the efficient, equitable operation of the association."
3. Pursuant to RCW 48.87.100, the Insurance Commissioner adopted rules, which are to be found in Chapter 284-87 of the Washington Administrative Code (WAC), establishing a Joint Underwriting Association (JUA) for Midwifery and Birthing Centers Malpractice Insurance. WAC 284-87-050 ("Administration"), set up a governing board for the JUA. WAC 284-87-050, ("Assessments") provides at (1) that "The board may calculate, levy and collect assessments from member insurers whenever necessary for the orderly operation of the (JUA)." WAC 284-87-070(4) provides that "Assessments are due thirty days after mailing. Any member insurer failing to remit its assessment when it is due is subject to revocation of its certificate of authority."

4. On June 22, 2000, the JUA sent "Pennsylvania" a Notice of Assessment, requiring that the insurer send payment of a \$4,335.14 assessment. The Notice also provided that "Assessments are due sixty days after mailing of the notice" and that "As provided in WAC 284-87-070(4), any insurer failing to remit its assessment is subject to revocation of its certificate of authority."
5. Since "Pennsylvania" had not paid its \$4,335.14 assessment by August 24, 2000, the JUA sent a reminder letter on that date to the insurer, pointing out that the assessment was overdue. The reminder letter again pointed out that "...any insurer failing to remit its assessment when due is subject to revocation of its certificate of authority."

CONCLUSIONS OF LAW:

1. By failing to timely remit its 2000 assessment, Insurance Company of the State of Pennsylvania violated WAC 284-87-070(4) and is subject to the revocation of its certificate of authority.
2. RCW 48.05.185 provides that "After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation or refusal to renew any certificate of authority, the Commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars nor more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due, the Commissioner shall revoke the certificate of authority if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the Commissioner by the Attorney General."

CONSENT TO ORDER:

1. Insurance Company of the State of Pennsylvania hereby admits and stipulates to the foregoing Findings of Fact and Conclusions of Law. In addition, it acknowledges its duty to comply with all applicable statutes and regulations of the State of Washington.
2. The Commissioner has offered a settlement of this matter, instead of suspending or revoking Insurance Company of Pennsylvania's certificate of authority in Washington State. "Pennsylvania" wishes to accept this offer of settlement, in lieu of further proceedings in this matter.

3. By agreement of the parties, the Commissioner will impose a fine of \$8,670.28, with \$6,936.22 of that sum being suspended upon conditions set forth below. The unsuspended \$1,734.06 must be paid in full within thirty days of the date this consent order is entered. If the \$1,734.06 is not paid to the Insurance Commissioner of the State of Washington, in full by that date, this will constitute grounds for the revocation of the certificate of authority which Insurance Company of the State of Pennsylvania holds in this state, and the entire amount of the fine, \$8,670.28, will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
4. From the amount of the fine, \$8,670.28, the sum of \$6,936.22 will be suspended for sixty days after the date this consent order is entered, upon condition that "Pennsylvania" pay its 2000 assessment of \$4,335.14 to the Midwife JUA not later than 30 days after the date this order is entered. If "Pennsylvania" does not do so, then the suspended \$6,936.22 will be due and payable sixty days after the date this order is entered. If that amount of \$1,734.06 is not paid in full within sixty days of the date this order is entered, this will constitute grounds for revocation of the certificate of authority held by "Pennsylvania" in this state, and the amount of \$8,670.28 will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
5. If Insurance Company of the State of Pennsylvania does pay the unsuspended \$1,734.06 of the fine to the Insurance Commissioner of the State of Washington, and also pays its 2000 assessment of \$4,335.14 to the Midwife JUA, both by not later than thirty days after the entry of this order, then the Insurance Commissioner will waive the suspended \$6,936.22 of the fine.

SIGNED AND AGREED, this 14th day of August, 2002.

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

By_____

Typed Name_____

Typed Corporate Title_____

ORDER:

1. Pursuant to RCW 48.05.185, the Insurance Commissioner hereby imposes a fine of \$8,670.28 (Eight Thousand Six Hundred Seventy dollars and 28/100) upon the Insurance Company of the State of Pennsylvania. Of this amount, the sum of \$6,936.22 (Six Thousand Nine Hundred Thirty-Six dollars and 22/100) shall be suspended upon conditions set forth below. The unsuspended \$1,734.06 (One Thousand Seven Hundred Thirty-Four dollars and 06/100) must be paid in full to the Insurance Commissioner of the State of Washington, not later than thirty days after the entry of this order. If the unsuspended \$1,734.06 is not paid in full to the Insurance Commissioner of the State of Washington by that date, this will constitute grounds for the revocation of the certificate of authority held by "Pennsylvania", and the full amount of the fine, \$8,670.28 will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
2. From the amount of the fine, \$8,670.28, the sum of \$6,936.22 will be suspended for sixty days after this consent order is entered, upon condition that "Pennsylvania" pay its 2000 assessment of \$4,335.14 to the Midwife JUA not later than thirty days after the date this order is entered, and that "Pennsylvania" pay the unsuspended \$1,734.06 to the Insurance Commissioner within the same length of time. If the \$4,335.14 is not paid to the Midwife JUA not later than thirty days after the entry of this order, or if the unsuspended amount of \$1734.06 is also not paid in full to the Insurance Commissioner of the State of Washington not later than thirty days after the entry of this order, then this will constitute grounds for the revocation of the certificate of authority held by "Pennsylvania" in the State of Washington, and the amount of \$8,670.28 will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
3. If "Pennsylvania" does pay the unsuspended \$1,734.06 to the Insurance Commissioner of the State of Washington, and also does pay its 2000 assessment of \$4,335.14 to the Midwife JUA, both not later than thirty days of the entry of this order, then the Insurance Commissioner will waive the suspended \$6,936.22.

ENTERED AT TUMWATER, WASHINGTON, this 19th day of August, 2002.

MIKE KREIDLER
Insurance Commissioner

By:

WILLIAM KIRBY
Legal Affairs Division